Inventor: PICKFORD ET AL
Serial No.: 10/501,538
Filing Date: 7/16/2004
Examiner: Christopher D. Prone
Group Art Unit: 3738

REMARKS

The Office action of January 16, 2009 has been carefully considered and the application has been amended accordingly.

Applicants' attorney takes this opportunity to express his thanks to Examiner Christopher Prone for his helpful suggestions during a telephone interview on March 19 during which it was suggested that the claims be amended to define the biocidal metal ions as being silver ions equivalent to an average surface loading of **up to** 73 μg/cm^2.

Previously, dependent claims 51 and 52 defined the loading as being **less than** 73 μg/cm^2. Thus, the claims were readable on a very small amount, even zero. As suggested by Examiner Prone, parent claims 44 and 47 have been amended to define an upper limit. A loading of **up to** 73 μg/cm^2 places the upper limit below a toxic level and clearly defines over the prior art teachings of the Rosenberg *et al.* Patent (5,185,075.

Claims 44, 46, 47, 49 and 50 are present in the application.

Applicants submit that up to 73 micrograms the matrix, as defined in parent claims 44 and 47 can hold silver but over this level, the silver would leak from the matrix and if large amounts enter the body it could be toxic. Further the matrix, containing silver, can actually detach from the substrate above these silver levels i.e. it's the structural and mechanical integrity of the matrix that is compromised and the resulting free titanium dioxide and silver particles could likely cause local inflamma-

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tion or even toxic effect. As amended, the upper level of the silver loading is below a toxic effect.

Accordingly, in view of the foregoing and the discussions in the previous amendment of October 28, 2008, applicants respectfully submit that the present claims patentably distinguish over Rosenberg *et al.* in the quantity of biocidal metal ions being such that the biocidal material is effective in suppressing infection after the surgical procedure and provides for a loading much higher than Rosenberg *el al.* but with a defined upper limit below a toxic level. Accordingly, applicant's believe that that claims 44, 46, 47, 49 and 50 are directed to allowable subject matter and such action by the Examiner is courteously solicited.

Respectfully submitted,

April 16, 2009

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I hereby certify that this correspondence is being facsimile transmitted to the USPTO at 571-273-8300.

April 16, 2009 William H. Holt
Date Signature

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